APPENDIX A

ORDINANCE NO. 24292

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 10 OF THE SAN JOSE MUNICIPAL CODE BY ADDING A NEW CHAPTER 10.09 ADOPTED AS AN URGENCY MEASURE TO PROHIBIT TARGETED PICKETING OF RESIDENCES; AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, the preservation and protection of the right to privacy in the home and the enjoyment of tranquility, well-being and sense of security in the home are in the public interest and are uniquely and critically important to the public health, safety and welfare; and

WHEREAS, picketing activity that is targeted at a particular residence or household whose occupants do not welcome such activity may harass and intimidate such occupants, is inherently and unreasonably offensive to and intrusive upon the right to privacy in the home and may cause the occupants of such home to experience great emotional distress; and

WHEREAS, such unwelcome and targeted picketing activity creates a "captive audience" situation because the occupants of a residence or household cannot readily move to another residence or household in order to avoid the unwelcome picketing activity being directed at them; and

WHEREAS, this "captive audience" situation and the protection of the right to privacy in the home requires the enactment of a reasonable time, place and manner restriction upon such unwelcome picketing activity that is targeted at a particular residence or household; and

WHEREAS, this ordinance is a necessary time, place and manner restriction intended to reconcile and protect the First Amendment rights of picketers to peacefully

communicate and express their ideas and opinions and the rights of persons to enjoy the right to privacy in their homes; and

WHEREAS, this ordinance is not intended to preclude the right to picket in a residential area generally and in such a manner that does not target or focus upon a particular residence or household; and

WHEREAS, existing law does not adequately protect the right to privacy in the home against such targeted picketing activity;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 10 of the San Jose Municipal Code is hereby amended by adding a new Chapter to be numbered and entitled and to read as follows:

CHAPTER 10.09
TARGETED RESIDENTIAL PICKETING

10.09.010. *Targeted Residential Picketing Prohibited.*

A. No person shall engage in picketing activity that is targeted at and is within three hundred (300) feet of a residential dwelling.

B. For purposes of this Chapter, the term "residential dwelling" means any permanent building being used by its occupants solely for nontransient residential uses.

C. For purposes of this Chapter, the term "targeted" picketing means picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of or around that particular residential dwelling.

D. This Chapter does not and shall not be interpreted to preclude picketing in a residential area that is not targeted at a particular residential dwelling.

10.09.020. *Private Right of Action.*

A. Any person who is aggrieved by an act prohibited by this Chapter may bring an action for damages, injunctive and/or declaratory relief, as appropriate, in a court of competent jurisdiction against any person who has violated, has conspired to violate, or proposes to violate the provisions of this Chapter.

B. Any aggrieved person who prevails in such an action shall be entitled to recover from the violator those damages, costs, attorneys' fees and such other relief as determined by the court. In addition to all other damages or relief, the court may award to the aggrieved person a civil penalty of up to One Thousand Dollars ($1,000.00) for each violation of this Chapter.

C. The remedies provided by this Chapter are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.

SECTION 2. This ordinance is an urgency measure necessary to protect the public health, safety and welfare and shall become effective immediately upon adoption pursuant to City Charter Section 605(d). The facts constituting such urgency are that: (i) there currently is no law protecting a person's right to privacy in the home against targeted residential picketing activity that unreasonably interferes with such privacy right, and (ii) there are residents of the City of San Jose who are fearful because they have received threats that targeted picketing activity is being planned to take place at their homes and, as a result of these threats, these residents feel intimidated and are made insecure.

SECTION 3. This urgency ordinance shall remain in effect for a maximum period of ninety (90) days and

shall be superceded by the adoption of Ordinance No. 24292.

ADOPTED IN ACCORDANCE WITH CITY CHARTER SECTION 605(d) this 9th day of February, 1993, by the following vote:

AYES: ALVARADO, BEALL, FERNANDES, HEAD, JOHNSON, POWERS, SHIRAKAWA; HAMMER

NOES: COLE, FISCALINI, PANDORI

ABSENT: NONE

SUSAN HAMMER
Mayor

ATTEST:

PATRICIA L. O'HEARN
City Clerk

APPENDIX B

ORDINANCE NO. 24321

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 10 OF THE SAN JOSE MUNICIPAL CODE BY ADDING A NEW CHAPTER 10.09 TO PROHIBIT TARGETED PICKETING OF RESIDENCES

WHEREAS, the preservation and protection of the right to privacy in the home and the enjoyment of tranquility, well-being and sense of security in the home are in the public interest and are uniquely and critically important to the public health, safety and welfare; and

WHEREAS, picketing activity that is targeted at a particular residence or household whose occupants do not welcome such activity may harass and intimidate such occupants, is inherently and unreasonably offensive to and intrusive upon the right to privacy in the home and may cause the occupants of such home to experience great emotional distress; and

WHEREAS, such unwelcome and targeted picketing activity creates a "captive audience" situation because the occupants of a residence or household cannot readily move to another residence or household in order to avoid the unwelcome picketing activity being directed at them; and

WHEREAS, this "captive audience" situation and the protection of the right to privacy in the home requires the enactment of a reasonable time, place and manner restriction upon such unwelcome picketing activity that is targeted at a particular residence or household; and

WHEREAS, this ordinance is a necessary time, place and manner restriction intended to reconcile and protect the First Amendment rights of picketers to peacefully communicate and express their ideas and opinions and

the rights of persons to enjoy the right to privacy in their homes; and

WHEREAS, this ordinance is not intended to preclude the right to picket in a residential area generally and in such a manner that does not target or focus upon a particular residence or household; and

WHEREAS, existing law does not adequately protect the right to privacy in the home against such targeted picketing activity;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Title 10 of the San Jose Municipal Code is hereby amended by adding a new Chapter to be numbered and entitled and to read as follows:

CHAPTER 10.09
TARGETED RESIDENTIAL PICKETING

10.09.010. *Targeted Residential Picketing Prohibited.*

A. No person shall engage in picketing activity that is targeted at and is within three hundred (300) feet of a residential dwelling.

B. For purposes of this Chapter, the term "residential dwelling" means any permanent building being used by its occupants solely for nontransient residential uses.

C. For purposes of this Chapter, the term "targeted" picketing means picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of or around that particular residential dwelling.

D. This Chapter does not and shall not be interpreted to preclude picketing in a residential area that is not targeted at a particular residential dwelling.

10.09.020. *Private Right of Action.*

A. Any person who is aggrieved by an act prohibited by this Chapter may bring an action for damages, injunctive and/or declaratory relief, as appropriate, in a court of competent jurisdiction against any person who has violated, has conspired to violate or proposed to violate the provisions of this Chapter.

B. Any aggrieved person who prevails in such an action shall be entitled to recover from the violator those damages, costs, attorneys' fees and such other relief as determined by the court. In addition to all other damages or relief, the court may award to the aggrieved person a civil penalty of up to One Thousand Dollars ($1,000.00) for each violation of this Chapter.

C. The remedies provided by this Chapter are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.

PASSED FOR PUBLICATION OF TITLE this 16th day of March, 1993, by the following vote:

AYES: ALVARADO, BEALL, FERNANDES, HEAD, JOHNSON, POWERS, SHIRAKAWA; HAMMER

NOES: COLE, FISCALINI, PANDORI

ABSENT: NONE

/s/ Susan Hammer
SUSAN HAMMER
Mayor

ATTEST:

/s/ Patricia L. O'Hearn
PATRICIA L. O'HEARN
City Clerk